

Appl. No.: 09/989,782
Amdt. dated 05/31/2005
Reply to Office action of March 31, 2005

REMARKS/ARGUMENTS

The remarks below are in response to the final Office Action dated March 31, 2005. In the Office Action, all of the claims were rejected under 35 U.S.C. §103(a). In particular, Claims 1-3, 5-9, 11-21, 24, 25, 28, 29 and 31-45 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,717,989 to Tozzoli et al. ("Tozzoli") in view of U.S. Patent No. 6,865,559 to Dutta ("Dutta").

Applicant thanks the Examiner for the personal interview conducted on May 4, 2005. During the interview, both Tozzoli and Dutta were discussed and it was requested by the Examiner that the present Response be filed relating the substance of the Applicant's position during the personal interview. The Examiner agreed to consider the present Response even though it is being filed after the final Office Action, and to identify prior art he believes overcomes the cited art's deficiencies asserted at the interview by the applicants' representatives.

CLAIM 25

Claim 25 of the present application recites the following¹:

- Receiving a package at a first location;
- Receiving shipment order information on the package;
- Transmitting a hold command associated with the package in response to receiving the shipment order information;
- Moving the package toward an intermediate location or holding the package at the intermediate location while under the hold command;
- Receiving a payment associated with the package from the purchaser;
- Holding the payment in escrow and transmitting a payment verification;
- Transmitting a release command and releasing the hold command associated with the package in response to payment verification;
- Delivering the package to a purchaser location;
- Receiving a delivery verification; and

¹ It should be noted that the above-listed steps are not necessarily in any particular order unless specifically identified as such.

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- Distributing payment out of escrow to the seller in response to the delivery verification.

Notably, Claim 25 recites moving or holding the package under the hold command before payment into escrow is made by the purchaser. This allows the package to continue on its journey without awaiting for upfront payment, but at the same time ensures that the package will not travel the entire distance to the purchaser location if payment is not made.

Rejection Under §103(a)

In the Office Action, it was alleged that Tozzoli teaches 1) transmitting payment verification, 2) shipping goods to an intermediate import broker location, 3) payment after receipt of goods by the carrier, 4) the buyer taking receipt of goods from an intermediate location and 5) holding the goods at the intermediate location. It was admitted that Tozzoli does not disclose holding the payment in escrow, releasing shipment from an intermediate location and payment out of escrow to the seller.

Dutta was cited as teaching the optional use of an escrow payment service, wherein the seller ships upon notification of a buyer making payment into escrow. *See*, the Office Action, page 8, last paragraph and page 9, first paragraph. Dutta was also cited as teaching an intermediate location performing shipment preparation services, including holding the shipment until release conditions apply. In the Office Action, it was further alleged that these shipment conditions could be payment into escrow. *See*, the Office Action, page 9, first paragraph.

It was also alleged that it would have been obvious to one of skill in the art to modify the method of Tozzoli to implement an escrow payment service with shipment holding at an intermediate location until a release condition taught by Dutta occurs. Dutta was lastly cited as teaching distributing payment out of escrow to the seller. *See*, the Office Action, page 9, second paragraph.

Summary of Applicant's Arguments

Even if it would have been obvious to combine the teachings of Tozzoli and Dutta, the resulting system would not include the following features of the method claimed in Claim 25:

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- Moving the package in transit to the purchaser before funds have been guaranteed or placed into escrow.

To the contrary, Dutta teaches nothing other than receiving payment into escrow before the goods are moved, even before they go to a station for inspection or shipment preparation.

- Releasing the package from a hold condition in response to notice that funds have been placed into escrow.

To the contrary, Dutta teaches only releasing the goods in response to passing inspection, the payment having been received in escrow previously.

More particularly, Tozzoli fails to teach or suggest the following elements of Claim 25:

- Transmitting a hold command associated with the package in response to receiving the shipment order information;
- Moving the package toward an intermediate location or holding the package at the intermediate location while under the hold command;
- Receiving and holding a payment associated with the package from the purchaser; and transmitting a payment verification;
- Transmitting a release command and releasing the hold command associated with the package in response to payment verification;
- Distributing payment out of escrow to the seller in response to a delivery verification.

Tozzoli is directed to a system that ensures payment through use of a funder that requires an up-front credit approval and application process. Not only is the credit process not a payment into escrow, the credit approval and application occurs prior to shipment of the package, slows the shipping process and blocks transactions by those unwilling or unable to meet credit approvals. See, Up-front Credit Approval Process Slows or Blocks Transactions in the detailed discussion of Tozzoli below.

Tozzoli discloses a hold command instituted in response to an embargo, but not a hold command triggered by receipt of shipment order information, as recited in Claim 25. Tozzoli

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discloses a scenario in which an embargo might occur and cause the system to notify a carrier to hold the shipment. However, this embargo hold is triggered by "outside information" related to a rare event extrinsic to Tozzoli's system; not by the routine entry of intrinsic shipment order information. See, Hold Command Not Triggered by Receipt of Shipment Order Information in the detailed discussion of Tozzoli below.

Tozzoli further makes no suggestion to release the hold command associated with an embargo on condition of a payment into escrow. See, Hold Command Not Released Upon Notice of Payment Into Escrow in the detailed discussion of Tozzoli below.

Tozzoli also fails to disclose payment out of escrow conditioned upon verification of delivery of the package to a purchaser. In Tozzoli, payment is made directly by the buyer to the seller and can occur prior to transfer of the package. See, Seller Paid Before Transfer of Package to Buyer and Payment for Package Not Out of Escrow in the detailed discussion of Tozzoli below.

Dutta fails to overcome Tozzoli's inability to teach or suggest the invention as recited in Claim 25. Dutta discloses a system in which an escrow payment for goods is made, but the escrow payment is received up front prior to inspection and then shipping of the goods. See, Requires Up Front Payment, Prior to Inspection and Shipping in the detailed discussion of Dutta below.

Further, Dutta discloses holding the goods for inspection by a third party, but only prior to shipment and not at some intermediate location. This delays shipment of the goods, unlike the invention as described in Claim 25 of the present application. The claim term "intermediate location" does not encompass a location to which goods are sent for pre-shipment activity. See, Up-front Inspection Location is Not an Intermediate Location in the detailed discussion of Dutta below.

Dutta's shipment from the inspection location is conditioned upon successful inspection, not on payment into escrow. Payment into escrow must be made up front and is no longer needed. See, Shipment from Inspection Location Not Conditioned on Payment into Escrow in the detailed discussion of Dutta below.

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Combining the escrow payment and inspection of Dutta with Tozzoli would still not teach or suggest the present invention because in both Dutta and Tozzoli, payment into escrow and payment guarantee must occur up front before shipping. Claim 25 of the present invention, on the other hand, recites placing a hold on delivery of the package to hold the package pending receipt of a release command, and this release command is in response to receipt of payment into escrow. Unlike a combination of Dutta and Tozzoli, this allows shipping of the package to commence while awaiting payment.

In addition, neither Dutta's inspection location, nor Tozzoli's embargo location, condition release of a hold command on delivery of a package on receipt of payment. At best a combination of Dutta and Tozzoli would condition release of a package for further delivery upon successfully meeting the requirements of inspection, or some extrinsic information, such as removal of an embargo. Neither of them suggests release of a hold command conditioned upon payment into escrow, or other guarantee of payment.

Tozzoli

Disclosure of Tozzoli

Tozzoli is generally directed to a trade system for facilitating a transaction between a buyer, a seller and a funder. The funder guarantees payment for transactions processed by the trade system between an approved buyer and a seller which satisfy the funder's predetermined criteria, as described at column 5, lines 36-39 of Tozzoli. In addition, the trade system verifies that each portion of the transaction properly relates to the purchase order and criteria established by the funder or trade system, which is referred to as a "filtering process," as described at column 5, lines 39-42. If filtering is successful, the system generates payment instructions "at appropriate times," as described at column 5, lines 42-43.

As will be described in more detail below, companies wishing to act as buyers and sellers must go through an application process with the funder. In particular, the funder compares buyer or seller profiles to a set of criteria, such as minimum annual revenue or years in business, as a condition of the buyer or seller gaining access to the system, as described at column 5, lines 46-

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60 of Tozzoli. Once the buyer or seller has access, the funder sets a credit limit for the buyer or seller, as described at column 5, lines 61-67.

After obtaining access to the system, a buyer may place orders to purchase goods from one or more sellers through the system. Each purchase order forms an electronic document and includes at least certain terms, such as a description of the goods, price, quantity and delivery times, as described at column 6, lines 32-37. The system filters purchase orders by comparing them to the screening criteria required by the funder and the trading system, as described at column 7, lines 34-38 of Tozzoli.

If the purchase order meets the criteria, the trade system can generate a payment guarantee on behalf of the funder, guaranteeing payment when the seller meets certain additional conditions, such as shipment of the goods by the seller. When the proposed purchase order meets the filtering criteria, the trade system forwards the purchase order in the form of data to the seller with an indication of the funder's payment guarantee, as described at column 7, lines 54-58 of Tozzoli.

The seller then creates electronic shipping documents including shipping instructions and a commercial invoice and filters the documents to ensure compliance with the original purchase order, as described at column 8, lines 47-56 of Tozzoli. Once the shipping documents are created, they are sent to the carrier or freight forwarder along with the goods, as described at column 8, lines 64-67. The carrier is provided a template by the system to create its own bill-of-lading which is screened against the original purchase order and then forwarded to the seller, the buyer and a buyer broker if involved, as described at column 9, lines 12-17 of Tozzoli.

The carrier then places the goods in transit to the buyer, as described at column 9, line 20 of Tozzoli. Once the goods are placed in transit in step 820 (as shown in Figure 3B of Tozzoli), a copy of the bill-of-lading is sent in step 860 (as shown in Figure 3C of Tozzoli) to the seller. Then, a funds transfer request is sent in step 870 to the buyer's bank and funds are transferred from the buyer's bank to the seller's bank in step 880, such as via a conventional credit card network or a third party electronic document interchange network.

Once funds have been transferred, a notification of funds transfer is received in step 900 by the system and sent to the seller in step 910. Then, the system transmits the data constituting

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the bill-of-lading to the customer in step 920 and authorizes the carrier to transfer possession of the goods to the buyer in step 930. The buyer receives the bill-of-lading data in step 940 and makes arrangements with the carrier to receive the goods, as described at column 17, lines 5-7 of Tozzoli.

Tozzoli describes an alternative payment mechanism at column 17, lines 17-25. In the alternative mechanism, the seller produces data representing an invoice and transmits it to the buyer for payment after submitting the bill of lading. The buyer then responds by creating a payment advice document advising the seller of the payment date and instructing a financial institution to transfer payment to the seller. In the paragraph disclosing the alternative payment mechanism, Tozzoli does not disclose details of the timing of payment by the buyer and transfer of the payment to the seller and, in particular, makes no mention of awaiting notification of receipt of the package by the buyer before distributing payment for the package to the seller.

If the same timing of the primary payment mechanism is used in the alternative payment mechanism, the seller of Tozzoli, as indicated in step 860 of Figure 3C, still has the bill-of-lading data long before the buyer receives the bill-of-lading data in step 940. The seller, therefore, would be able to request payment with its bill-of-lading long before the buyer could obtain possession of the package with its bill-of-lading. No suggestion is made by Tozzoli that the payment could be withheld by the buyer until receipt of the package.

In yet another payment arrangement, the trade system transmits an instruction to the seller's bank to request payment and the seller's bank requests payment from the funder using the trade system, as described at column 17, lines 25-30 of Tozzoli. Similar to the first alternative payment arrangement, this second alternative does not describe the timing of the payment to the seller, disclosing only different parties requesting and receiving payment, much less placing a hold on delivery while awaiting payment into escrow and then awaiting notification of shipment to the buyer before distributing payment to the seller out of escrow.

Tozzoli also discloses that the trade system "may utilize data representing outside information in processing electronic documents" and cites a specific example "an embargo from one country to another may cause the system to automatically notify a carrier to hold a shipment,

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or may cause the system to reject shipping documents relating to the embargoed country." See, column 17, lines 30-36 of Tozzoli.

Tozzoli further discloses that in some cases the system may proceed without the funder's guarantee. "If the proposed purchase order does not meet the filtering criteria, the buyer may revise its terms, or, in some cases, the buyer may instruct the trade system to forward it to the seller without the funder's payment guarantee and the parties may elect to proceed with the transaction using other non-system avenues for payment guarantees, and using the system as a document manager." See, column 7, lines 64-67 and column 8, lines 1-3 of Tozzoli.

Tozzoli Doesn't Teach or Disclose Claim 25

There are several fundamental differences between the disclosure of Tozzoli and the present invention.

Up-front Credit Approval Process Slows or Blocks Transactions

The system of Tozzoli requires a detailed, up-front credit application process. This slows the transaction down and requires the participants to have a credit history to participate. The effort involved in the credit application process would deter most small transactions. Further, the system of Tozzoli has a credit limit for the participants which would prohibit larger transactions.

Claim 25 of the present invention, in contrast, recites 1) moving the package toward, or holding the package at, the intermediate location under a hold command, 2) receiving a payment associated with the package and then 3) releasing the hold command in response to receipt of the payment. Therefore, in Claim 25, the shipping component of the transaction can initiate under the hold command and make it as far as the intermediate location, allowing parallel efforts at shipping and processing of the payment without fear of the package traveling past the intermediate location. Also, no credit application process specific to the value of the package is required by Claim 25, deterring or blocking small or intermittent users of the system. In combination, these aspects facilitate a quick, confident delivery of the package by the seller and participation by a buyer with little or no credit history.

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Tozzoli at one point (column 7, lines 64-67 and column 8, lines 1-3) discloses an instance where shipping occurs without a funder guarantee. However, this is when the purchase order itself does not meet the filtering criteria. To submit the purchase order, the buyer still needs to have access to the system, which requires the up front credit check associated with the goods being shipped.

Hold Command Not Triggered by Receipt of Shipment Order Information

It was alleged in the Office Action that Tozzoli discloses the hold command of Claim 25. Tozzoli suggests that outside information, such as the embargo, may be used to hold shipment of a package or reject documents relating to that country. However, an embargo is only a rare event and does not occur as a result of entry of shipment order information. The embargo is information associated with an unexpected event, not a normal request within the process, such as submission of shipment order information.

In claim 25, the only condition to starting the hold is to choose the service, i.e., by entry of the shipment order information. In Tozzoli's embargo scenario, due to the rarity of an outside event such as the embargo, the hold command would be unpredictable and would not happen the majority of the time a shipment is made. As a result, Tozzoli does not teach or suggest a hold command triggered by receipt of shipment order information as recited by Claim 25.

Hold Command Not Released Upon Notice of Payment Into Escrow

Clearly there is no teaching in Tozzoli to release a hold command based on payment into escrow. There is a credit guarantee in Tozzoli, not an escrow payment. In any case, receipt of credit approval in Tozzoli does not release a hold command.

There is no suggestion in Tozzoli that "outside information" relating to the start or end of the embargo scenario would include payment information. In fact, such information is accounted for *inside* the system, as the system handles payment. An embargoed country would have no interest in, nor would it be expected to provide, information on payment. Further, the payment has already been accounted for with the up-front guarantee by the funder prior to

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shipment. Payment, therefore, is no longer a concern to the system of Tozzoli once it reaches the embargo location.

Tozzoli suggests that the participants in the process can opt out of its payment system and use other "non-system" avenues for payment guarantee. However, Tozzoli fails to suggest what such payment systems might be and makes no particular suggestion that use of an escrow payment might be beneficial. Further, there is no suggestion in Tozzoli that payment might trigger release of a hold command on a package. This lack of disclosure or teaching of escrow is admitted in the Office Action, as described above.

The mere passing suggestion, therefore, of an embargo scenario or holding a package, without the associated details of holding the package in response to entry of shipment information and release of the hold command upon receipt of payment into escrow is insufficient to teach or suggest Claim 25 of the present invention.

Seller Paid Before Transfer of Package to Buyer

In Tozzoli, payment is transferred to the seller's bank in step 880 before transfer of the package to the buyer is authorized in step 930, and before the buyer is transferred the bill-of-lading data in step 940. Therefore, the seller in Tozzoli receives payment many steps before the buyer receives the package, exposing the buyer to the risk of not receiving the goods. In Claim 25 of the present application, payment to the purchaser is in response to delivery verification, protecting the purchaser by ensuring receipt of the goods before payment out of escrow.

Payment for Package Not Out of Escrow

The payment in Tozzoli is not escrowed because payment is transferred directly from the buyer's bank to the seller's bank.

Therefore, for at least the reasons described above, Tozzoli fails to teach or suggest Claim 25 of the present application.

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DUTTA

Disclosure of Dutta

Dutta discloses an inspection service that uses an inspection-based release of an escrowed payment, as shown in Figure 2A. The system includes financial services 200, buyer 202, seller 204 and an escrow service 206. The financial services include a financial infrastructure of banks, electronic payment services and credit card services. The escrow service holds a payment from the buyer in escrow until the successful receipt of goods by the buyer from the seller.

The process of Dutta is illustrated in Figures 2B and 2C. Referring to Figure 2B, the buyer and seller exchange information about the goods in a first step 220. In a step 222, the buyer or seller creates a new transaction with the escrow service. In a step 224, the buyer and seller agree to terms of the transaction within the escrow service. In a step 226, the buyer provides a payment to the escrow service. The escrow service then notifies the seller of the payment in step 227. The goods are inspected in a step 228 by the inspection service to verify that they match the description of the goods in the transaction recorded in step 224 by the escrow service. In a step 230, the inspection service certifies the goods to the escrow service and the goods are shipped to the buyer in a step 232.

Dutta states: "As a practical matter so that the inspection service can perform its responsibilities efficiently, it is assumed that the inspection or certification of the goods occurs at the same location that the shipping party releases the goods, such as at a parcel delivery company, an overnight delivery company, a general courier, or a private mailbox provider." See, column 8, lines 23-28 of Dutta. Dutta does discuss inspecting the goods at a location other than that at which the seller releases physical possession of the goods, but consistently refers to inspection as occurring prior to shipment. See, column 8, lines 4-10; 51-58 of Dutta. The focus in Dutta is on "shipment preparation."

In addition, Dutta teaches that inspection by the delivery company is less desirable because of the risk of a non-objective assessment of the goods. "The inspection or certification of the goods may be performed by the delivery company, if necessary, although it should be

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noted that the delivery company may not be objective as the delivery company incurs liability by attempting to deliver the goods in their original condition." See, column 8, lines 34-39 of Dutta.

Referring to Figure 2C of Dutta, after step 230, the system determines if the goods are acceptable to the buyer at step 234. If the goods are acceptable, the buyer notifies the escrow service of its acceptance in a step 236. Then, the escrow service provides payment to the seller in a step 238.

Dutta Doesn't Teach or Disclose Claim 25

Requires Up Front Payment, Prior to Inspection and Shipping

Dutta discloses a system in which payment, in step 226, occurs prior to receipt of the goods and inspection of the goods in step 228, and later shipment of the goods. Notably, this is similar to the shortcoming of Tozzoli, wherein a payment guarantee through credit approval and a tender is secured up front, prior to shipment of the package. Dutta's teaching of the importance and advantages of an up-front inspection of the goods, before shipment of the goods, further delays shipment of the goods, just like Tozzoli's pre-shipment payment guarantee.

Claim 25 of the present invention, in contrast, recites 1) moving a package toward, or holding the package at, the intermediate location under a hold command, 2) receiving a payment associated with the package and then 3) releasing the hold command in response to receipt of the payment. Dutta's lack of coordination of payment with shipment does not provide the advantage of efficient parallel processing of payment and shipment, with the hold command guarding against delivery past the intermediate location without receipt into escrow of payment for the package.

Up-front Inspection Location is Not an Intermediate Location

Dutta discloses holding the goods for inspection by a third party, but only teaches handling the goods prior to shipment and not at a post-shipment intermediate location. In fact, Dutta suggests that a shipment company would be a poor inspection agent, a sentiment that leads one away from having an inspection performed after shipment begins.

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Shipment from Inspection Location Not Conditioned on Payment into Escrow

Even if Dutta were (erroneously) considered to teach inspection of the goods at an intermediate location, the payment for the goods has already been made by the time the inspection location has been reached. Dutta discloses that shipping of the package is conditioned upon a successful inspection of the goods, not upon payment by the buyer into escrow, since payment into escrow must be made before the goods reach the inspection location.

Dutta, therefore, fails to teach or suggest Claim 25 of the present application.

REJECTION UNDER 35 U.S.C. §103(A)

In arguing against the obviousness rejection in the final Office Action, Applicant once again calls the Examiner's attention to Claim 25, and in particular, the coordination of the shipment under the hold command, the payment into escrow and the release of the hold command. Claim 25 of the present invention recites 1) moving the package toward, or holding the package at, the intermediate location under a hold command, 2) receiving a payment associated with the package and then 3) releasing the hold command in response to receipt of the payment.

Dutta discloses use of an inspection location but, as described above, this inspection location is not the same as an intermediate location because it is utilized prior to shipment of the goods. Shipping of the goods by the carrier in Dutta does not occur prior to its inspection of the goods, and release from the inspection location is not conditioned upon payment into escrow. Payment into escrow is required up-front, prior to inspection of the goods in Dutta and shipment of the package is only conditioned on successful inspection by Dutta, not payment for the goods. Similarly, in Tozzoli, credit approval for the funder guarantee is required before shipment of the package. Although Dutta's payment is a cash payment, and doesn't require up-front credit approval like Tozzoli, the payment into escrow is still up front, prior to shipping.

As a result, replacing Tozzoli's credit-based payment system with Dutta's escrow payment system would at best result in a system having steps in the following order 1) payment

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into escrow, 2) inspection of the goods prior to shipment, 3) shipping of the goods, and then 4) payment out of escrow upon acceptance of the goods.

As described above, Tozzoli suggests shipment of a package without a funder guarantee and instead using non-system avenues for payment guarantees. There is no explicit or implicit suggestion by Tozzoli that the "non-system avenues" would include payment into escrow, or that an escrow, or other guaranteed, payment for the goods by the buyer could be coordinated with holding the package at an intermediate location. Again, the combination of Dutta and Tozzoli would still require an up-front payment into escrow.

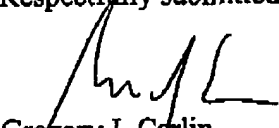
As a result, there is no teaching or suggestion in either Dutta or Tozzoli that payment into escrow should occur after shipping, or that inspection should be at an intermediate location after shipping and that a release from the intermediate location for further shipping should be conditioned upon the payment into escrow. None of the remaining cited references overcomes the failure of Tozzoli and Dutta to teach or suggest the present invention as recited in Claim 25.

The remaining independent Claims 1, 21, 35, 36, 37 and 38 have also been amended to clarify distinctions over Tozzoli, Dutta and the remaining cited references and should therefore also be allowable. Each of the remaining Claims 2-3, 5-9, 11-20, 24, 28, 29 and 31-34, and 39-45 depend from and further patentably distinguish respective ones of the independent claims and therefore should also be allowable. The rejections of the pending claims under 35 U.S.C. §103(a) over Tozzoli and Dutta have been overcome.

In view of the remarks and amendments presented above, it is respectfully submitted that the present application is in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application. It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

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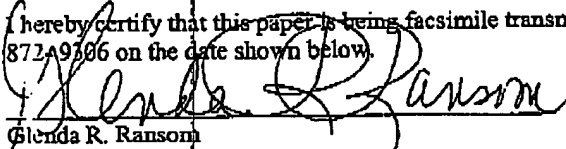
Respectfully submitted,


Gregory J. Carlin
Registration No. 45,607

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

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